

## The case of Piruani: contested justice, legal pluralism, and indigeneity in highland Bolivia

Article (Published Version)

Doyle, Matthew (2021) The case of Piruani: contested justice, legal pluralism, and indigeneity in highland Bolivia. *PoLAR: Political and Legal Anthropology Review*, 44 (1). pp. 60-74. ISSN 1555-2934

This version is available from Sussex Research Online: <http://sro.sussex.ac.uk/id/eprint/100607/>


This document is made available in accordance with publisher policies and may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher's version. Please see the URL above for details on accessing the published version.

### **Copyright and reuse:**

Sussex Research Online is a digital repository of the research output of the University.

Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable, the material made available in SRO has been checked for eligibility before being made available.

Copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

Matthew Doyle   
University of Sussex

## The Case of Piruani: Contested Justice, Legal Pluralism, and Indigeneity in Highland Bolivia

*The 2009 Bolivian constitution included provisions that establish a radical form of de jure legal pluralism by creating a parallel legal system that gives full recognition to the nonstate legal orders and forms of conflict resolution of Indigenous communities. This article examines how a land dispute within a Bolivian highland Indigenous community resulted in a disagreement between different local forms of political and judicial authority. This turned on the question of which authorities had the right to judge the case, the nature of justice and indigeneity, and the legal pluralism enshrined in the constitution. Analysis of this situation illustrates not only the internal tensions and paradoxical effects of this juridical project but also the potential limitations of any attempt to formally recognize legal plurality. [legal pluralism, Indigenous justice, usos y costumbres, plurinational state, Movimiento al Socialismo]*

Following its election in 2005, the national *Movimiento al Socialismo* (Movement for Socialism; MAS) government sought to radically transform Bolivian society to fully include the Indigenous peoples that make up the country's majority population. Central to this project was a constitution ratified in 2009. This established a "plurinational" state that recognizes the autonomous coexistence of distinct Indigenous groups and permits Indigenous communities to exercise their own forms of justice and law within a separate jurisdiction recognized as equal to the state courts. Indigenous practices concerning the judgment and punishment of transgressions are treated as independent sources of legal authority. This reform therefore goes far beyond previous attempts to establish de jure legal pluralism based on limited recognition within the state legal system of distinct rules and procedures for specific groups (Postero 2016; Thomas 2017).

I carried out fieldwork between 2015 and 2016 in the Quechua-speaking highland Indigenous community of Bolívar province, documenting the effects of these constitutional reforms on its internal system of government. As a result of historical interaction between Bolívar and the successive legal regimes of the colonial and postcolonial Bolivian state, this consists of multiple overlapping sets of authorities: the peasant union, the traditional or *ayllu* authorities and a province-wide municipal council. Although these different authorities are locally understood as a single system, there exists a tension between them that can erupt into open conflict, not only over local power but also over contested understandings of their community and what constitutes membership. During my fieldwork, I observed how the peasant union and *ayllu* authorities clashed, as I attended political meetings and cultural events and interviewed key figures.

*PoLAR: Political and Legal Anthropology Review*, Vol. 0, Number 0, pp. 1–15. ISSN 1081-6976, electronic ISSN 1555-2934. © 2021 The Authors. *PoLAR: Political and Legal Anthropology Review* published by Wiley Periodicals LLC on behalf of American Anthropological Association.

All rights reserved. DOI: 10.1111/plar.12424.

This is an open access article under the terms of the Creative Commons Attribution License, which permits use, distribution and reproduction in any medium, provided the original work is properly cited.

A major issue that divided peasant union and ayllu leaders was a dispute between two sets of families in the village of Piruani over ownership of an area of arable land. “The case of Piruani,” as it was commonly referred to, had resulted in grave physical fights between members of the different families. Claimants from each side had separately approached the state courts, the peasant union and the ayllu authorities, which had each ruled on the matter. Subsequently, this conflict among families over land became a dispute between the local ayllu and peasant union authorities, regarding the legitimacy and constitutionality of each other’s actions, and what represented a just resolution. Crucially, this dispute between systems of authority took place because of the *de jure* legal pluralism guaranteed by the new plurinational constitution and through contested interpretations of its meaning. A progressive legal measure to empower Indigenous communities thus became the basis for conflict within one.

This conflict occurred in part because the constitution treats Indigenous communities as internally homogenous, and assumes there exist clearly distinguishable nonstate legal or normative orders that can be afforded recognition (Goodale 2019). This is similar to academic conceptions of legal pluralism in which normative orders are believed to map neatly onto discrete internally homogenous groups or communities and operate as systems of institutionalized social rules (Benda-Beckmann and Turner 2019; Tamanha 2007). However, Indigenous communities are not bounded entities and may contain multiple interpenetrating normative orders that can result in the blending of legal norms, practices, and logics known as interlegality (Hoekema 2005; Santos and Exeni 2012). Moreover, forms of Indigenous dispute resolution tend not to draw on explicit norms or systems of institutionalized rules but on shared and largely unspoken principles and understandings regarding personhood, community membership, and the duties and obligations these entail (Fernández-Osco 2001).

Although the constitution recognizes the legal authority of Indigenous leaders and customary law, it says little about the internal makeup of Indigenous communities and contains conflicting definitions of legal pluralism and indigeneity (Barrantes-Reynolds 2016; Goodale 2019; Schavelzon 2013). The ayllu and union are therefore left to contest *which* set of leaders should be considered the legitimate Indigenous judicial authorities and *what* constitutes authentic Indigenous justice within their community. It is for this reason that the case of Piruani provoked a struggle over both local power and the definition of justice. This included contested understandings of conflict resolution, the ownership of land, and the meaning of community. In doing so, the two sides offered not only separate judgments of the case but also alternative interpretations of the constitution, through which they sought to legitimate their roles as judicial authorities and their normative understandings of their community. This illustrates both the limitations of the MAS government’s constitutional reforms and of any project of *de jure* legal pluralism that does not engage with the internally heterogenous and essentially contested nature of unofficial systems of law.

### **Systems of Authority and Justice in Bolívar**

The province of Bolívar, located in the mountainous high plains of the Bolivian altiplano, is the descendent of the historic ayllu Kirkiawi (Mendoza, Gonzáles, and Mamani 2002). The term ayllu refers both to a system of precolonial territorial organization of the Indigenous Aymara kingdoms and Inca state and to contemporary highland regions with their own forms of territory and government (Bastien 2003; Platt 1988). However, it is currently recognized as both a province and a collective *Tierra Comunitaria de Origen* (Native Community Land, or TCO). Its seven thousand inhabitants mainly live in village hamlets or *comunidades* that typically comprise some thirty families who practice subsistence

agriculture, such as cultivating tubers and pseudocereals and raising sheep and llamas. Families live in clusters of adobe huts, take their herds to pasture in the surrounding hills, and labor intensely during yearly periods of sowing and harvesting. Historically, they would acquire additional foods and goods through trade with distant valley communities and the culturally mixed *mestizo* townsfolk of the provincial capital. Today, it is common to travel to the cities of Oruro and Cochabamba or the tropical lowlands to buy and sell goods, engage in seasonal work, or to settle permanently. This can result in people having multiple residences. While families have heritable control of plots of land, this is a form of usufruct right within the traditional territorial organization of the ayllu rather than full legal ownership. Within each village *comunidad*, the management of land, the conflicts surrounding it, and the associated community rituals are the responsibility of the traditional ayllu authority or *jilanku*, who alongside the local peasant union leader or *dirigente* and monthly communal assembly, form the lowest level of government within the province.

Above the *comunidad* are intermediate ayllu and union authorities and at the level of the province, the province-level union leader, the *Kuraj Malku* (head of the ayllu), and the elected municipal government. Leaders attend a busy circuit of political meetings, including those of their home *comunidad*, nongovernmental organizations (NGOs), development committees, and the general provincial assembly. Over the course of seventeen months of fieldwork, I followed individuals along this circuit as well as to regional political meetings and their other homes in the cities. Leaders are said to “walk” the circuit of meetings, an expression that refers both to traveling to represent their community and the difficult path someone takes to become a respected adult person through their role in civic politics. Although the ayllu and peasant union have overlapping functions, it is union leaders who typically solicit development funds from the municipal government and NGOs. Meanwhile, ayllu leaders are regarded as responsible for upholding the customary practices that materially and symbolically reproduce the territorial and social organization of their community. These include administering land use, making ritual offerings to the land during the opening of new fields or to local deities, and resolving conflicts, including disputes over access to pasture, common resources, and the ownership of family plots.

A substantial anthropological literature describes features of ayllu communities. These features include a lived relationship with the collectively managed land that the people inhabit, a nonmonetary economy, and rotating leadership roles, which are all mediated by principles of complementarity, reciprocity, and duality (Albó 1977; Bastien 2003; Cusi-canqui 2010; Platt 1988). These practices and concepts in Bolívar form part of people’s notions of personhood and community membership, but not all are uniformly shared or interpreted. When local authorities make judgments about disputes, they do not follow precise rules but draw on these constellations of shared understandings. This means each case involves a flexible interpretation of entitlements, obligations, and infractions. This feature of Bolivian highland Indigenous societies has been described by Marcelo Fernández-Osco (2001) as *justicia de acuerdos* (justice by agreement) through which the severity of transgressions and the nature of punishments is negotiated contextually, often with participation by the community.

### The Case of Piruani

The *comunidad* of Piruani, like others in Bolívar, manages its land collectively, and access to it is determined communally with the oversight of the local *jilanku*. Family plots are demarcated only by lines of stones. Because of high levels of migration and multiple residences, both the *jilanku* and peasant union *dirigente* ordinarily do not live within the community and only attend monthly meetings and cultural events, and travel from their

homes in the nearby cities of Cochabamba and Oruro when requested. Piruani is one of many communities that have been affected by migration, and the lack of an ongoing presence of community leaders exacerbated the conflict surrounding the case. The affected parties directly sought the assistance of higher-level leaders of the ayllu and union as well as the state civil courts instead of consulting their local leaders in the first instance.

I received various accounts of how the case of Piruani had developed from different sources but was not present in the community at the time the events took place. I have not interviewed the affected parties and simply present the different accounts and interpretations offered by members of the ayllu and peasant union and the public discourse I observed in local political meetings. It was explicitly referred to as a legal case by the local authorities, who used it to illustrate their understandings of justice and law. This article therefore both analyzes these readings of the case and the historical and social factors that explain why local leaders disagreed over its meaning.

I was provided an account of how events unfolded by Francisco Larico, a Quechua Indigenous rights activist and paralegal, who is also the brother-in-law of the Kuraj Malku, Gregorio Jacinto.<sup>1</sup> I met Francisco at a conference on Indigenous justice in La Paz, and he later agreed to an interview in Cochabamba. Our interview took place on a sunny afternoon in a café in El Prado, just north of the city center, on a long tree-lined boulevard filled with bars and restaurants. Francisco, a man in his early thirties, was critical of the MAS but still enthusiastic about the possibility of Indigenous peoples gaining autonomy over matters of justice. He had helped Gregorio with a presentation to the constitutional court in the city of Sucre concerning the case of Piruani. This purported to demonstrate how its resolution represented a sound example of customary law.

According to Francisco, the trouble began when one of the families from Piruani appropriated lands belonging to neighboring families. The problem with the case, he claimed, began with the failure to respect the proper channels in dealing with a dispute of this nature. Instead of approaching the local *jilanku*, the families whose lands had been encroached upon spoke directly with the province-level peasant union. At this point, the union leaders should have involved Gregorio as the main province-level representative of the traditional authorities and head of the ayllu. Instead, the peasant union leaders passed the matter up to the *central departmental*, the leadership of the peasant union at the level of the whole of Cochabamba department. The departmental level of the union thereupon issued a resolution declaring the very family who had encroached as the victims and declared the other families as the aggressors, and issued them a fine of twenty thousand bolivianos (approximately three thousand US dollars). At the same time as the central departmental made their judgment on the case, the protagonist of the encroaching family prosecuted the other families for alleged acts of violence. This hearing occurred in the jurisdiction of the *justicia ordinaria* (state courts) in the city of Oruro. The judge eventually threw out the case, but the protagonist now had legal documents showing that the case had been taken to court. He returned to Piruani with these papers, which he used to intimidate the other families into not pursuing the matter further.

Gregorio, the Kuraj Malku, became involved in the case only some fifteen weeks after the families had taken it to the province-level union leadership, when the matter was brought to his attention by the local *jilanku*. According to Francisco, Gregorio and his fellow ayllu authorities took some time to analyze the case before raising an objection with the resolution issued by the central departmental: "They object to this resolution, indicating that it is unconstitutional. First because it didn't go through the correct procedures, second because it infringes upon the constitutional rights of self-government and the principles of the *usos y costumbres*" (S).<sup>2</sup>

According to Francisco, Gregorio, and other ayllu authorities, the actions of the central departmental contradict the 2009 Bolivian constitution. Indigenous communities have the right to resolve disputes internally according to their customary law. Therefore, in making a judgment without involving local leaders, the community's constitutional rights were violated. In Bolívar, the term *usos y costumbres* is used in a similar way to "customary law," although it has a far broader meaning by encompassing local forms of governance and customs internal to the community, including those related to the communal management of land. According to the understanding of the *usos y costumbres* favored by Gregorio and other traditional leaders, the nature of the judgment carried out by the central departmental went directly against their principles. For Gregorio, the peasant union is "infected with the mentality of the *justicia ordinaria*." When I pressed him as to what he meant, he explained this was related to money. The peasant union, like the civil courts, resolves disputes through placing fines. He claimed that Olker Nina, the province-level union leader, had demanded two thousand bolivianos from all the parties involved as a "guarantee" to resolve it.

After Gregorio judged the case, he went to Piruani to carry out a ceremony in which the different factions symbolically resolved their differences through the exchange of live-stock. The solution had been witnessed by all members of the community and the local ayllu and peasant union leaders. For Gregorio, the form in which the dispute was resolved complied with the *usos y costumbres* and was qualitatively different to that offered by either the ordinary court or the peasant union. Instead of punishing the guilty parties for the violence they had inflicted, he carried out a reparation between the warring families. They slaughtered a sheep, prepared *kanka de oveja* and *papa wathiya*, traditional delicacies of salted mutton and potatoes baked in the ground, and then sat down together as a community to feast. Gregorio was at pains to point out that the resolution to the conflict had been carried out without money, unlike the solutions offered by the peasant union, which involve fines and provide the opportunity for corrupt union leaders to profit. Even worse, he claimed, are the ordinary courts, which are inherently corrupt, and rule in favor of whichever party can offer a larger bribe. This emphasis on the corrupting nature of money reflects a tendency for ayllu authorities to idealize the traditional nonmonetary economy of the ayllu, based on forms of reciprocal interdependence between persons and their territory, enacted through ritualized exchanges, including labor exchange and exchanges among persons, nature deities, and the land (Bastien 2003). It also, as will be discussed presently, reflects a particular understanding of the nature of community embodied by such territorial and social organization.

When I spoke about the case with Olker Nina, he offered a different account. As we sat on wooden benches in the courtyard of his house, and his wife prepared us tea in the kitchen, he laid out his view of the matter. Firstly, the judgement by the departmental level peasant union had sided with the family Gregorio claimed to be the genuine offenders. Olker viewed this judgment to be correct because the decision had been made in the light of violence suffered by the family. He maintained that the violence exhibited in Piruani was worrying and illustrative of problems throughout the province. The custom of multigeniture had led to the successive fractioning of family lands and the intensification of competition among families over an increasingly scarce resource. This was the case even though many village comunidades appeared abandoned as residents, who spent most their time in the cities or tropical lowlands, only returned periodically to cultivate their land. Being absent from the community meant that it was difficult to recognize incursions upon one's land or its precise boundaries. Moreover, the local *jilankus* and union leaders responsible for adjudicating these matters often mainly resided elsewhere themselves and only returned for monthly community meetings. He claimed Piruani to be an exemplary case of all these

factors and indicative of the problems faced by the province at a time of change. Moreover, Olker stated that he did not believe Gregorio had resolved the conflict. He described the situation in the following terms:

What is it to give a solution? If they are in a problem to do with territory [...] we said because before we went with the mayor, everyone. We said we're going to inspect the land and accordingly we'll give a simple [individual] titling to everyone involved in the conflict, in equal parts. But I've heard that this one, Gregorio, hasn't done it that way. He's just placed sanctions and not given a solution. (S)

For Olker, the only way to resolve the families' conflict and to stop the violence from reoccurring was to establish clear boundaries between their lands by issuing individual title deeds. As long as the land remained communally managed, he maintained, the violence would continue. He seemed to view Gregorio's claim to have provided a resolution as irresponsible because it did nothing to end the conflict. For him, the exchange of livestock and the ceremony carried out by Gregorio was merely a "sanction" for the violence and not a definitive judgment. This sentiment was echoed in interviews I held with various local MAS politicians in the municipal government.

### **Justice, Land Tenancy, and Systems of Authority**

The differences between ayllu and union leaders over the resolution of the case of Piruani partly concern how land should be owned and managed. In the comunidades of the province, access to plots of arable land depends on ongoing community membership and fulfillment of social obligations. It is the ayllu authorities who mainly administer this system of land tenancy and perform associated rituals. Meanwhile, the case of Piruani was frequently cited by union leaders to justify replacing this system with individual land titling. In turn, local authorities I spoke with claimed that the union was deliberately misleading people about the way land is managed. The point was made repeatedly that the real motivation of the union and local MAS politicians in advocating individual titling was to "disappear the ayllu": to abolish the ayllu as a form of territorial organization and the traditional authorities themselves.

Scholars of Bolivian Andean communities have observed that conflict over land is endemic and a seemingly unavoidable feature of traditional tenancy systems (Albó 1977). Without precise boundaries, it is inevitable that individuals will encroach upon others' plots and that local authorities will not always be able to determine who is the victim and who is the offender. Even so, the cyclical rotation of the land means that feuds often resolve automatically, as *ayonoqa* (communal plots) are never cultivated consecutively for more than a few years. Once a communal plot is left fallow, a new one must be "opened" in an official ceremony in preparation for its cultivation ahead of the rainy season. This includes the *reparto*, or parceling out, of the new land among families by the *jilanku*. With the opening of the new *ayonoqa*, the feuds normally come to an end. Interestingly, in Quechua, the same word used to describe the leveling of earth to prepare it for cultivation which follows the *reparto* of lands is also used to mean "forgive": the verb *pampachay* (meaning "to flatten" or "to level out") is used alongside the Hispanicism *perdonay*. The term implies a notion of justice and conflict resolution focused on the restoration of balance rather than on identifying the guilty party and aggressor. This does not mean there exists no concept of blame or guilt, which was described to me with the Spanish word *culpa* or the Quechua word *juch'a*. I was given examples of justice carried out in the past in which the *jilanku* would give a beating to all the parties involved in a dispute with his *chicote* (rope whip), so

they could experience shame and understand the mistakes they had made before resolving their differences.

It becomes clear here why Gregorio emphasized that his resolution to the case of Piruani by using nonmonetary reparations and without quantifying damages represented a key difference in principle. According to Gregorio, the most important thing for a man living in the highlands is his sense of dignity, resulting from his standing in the community and the public image he projects. On the one hand, paying a monetary fine allows the offender to absolve himself of the debt he owes the victim with no loss of face. On the other hand, the exchange of livestock and the ceremonial reparation he carried out made the offender publicly admit his guilt and beg forgiveness in front of the whole community. Placing fines involves attributing responsibility to parties conceived of as discrete individuals and dissolving the relationship between them once a judgment is made. Symbolic reparation of the social and cosmological order, understood as the totality of relationships of reciprocal interdependence that constitute the territorial and social organization of the ayllu, involves the maintenance and strengthening of these bonds.

Because the different authorities had not only offered alternative solutions but had sided with different parties, the conflict in Piruani transformed into a dispute between the peasant union and MAS municipal government on one side and the ayllu authorities on the other. However, the conflict between authorities was motivated largely by the need to define the nature of justice and their respective roles as systems of authority, as the new constitution and plurinational state oblige Indigenous communities to publicly define their internal systems of governance to gain recognition and benefits. This may provoke debates over what constitutes “authentic” Indigenous leadership and identity: a phenomenon that has been studied extensively in the context of communities undergoing the legal process of converting to the self-governing “Indigenous autonomies” established by the 2009 constitution (Plata and Cameron 2017).

When the matter came up in public meetings, it was clear that both sides believed the other to be going beyond the limits of their roles, referring to an idealized structure of the different social organizations and the division of labor between them. For the ayllu leaders, it was illegitimate for the union to resolve questions of justice, as their role is to act as the external political representatives of the community and to solicit funds for development. The union leaders argued that they routinely assume the responsibility for many of the problems that result from conflicts over land. They also objected that Gregorio and other ayllu leaders had been going to meetings in the city of Sucre as part of a consultation process regarding the implementation of the new Agrarian and Environmental Tribunal. These meetings were attended by numerous representatives of Indigenous communities and represented forums in which the nature of Indigenous justice could be illustrated and debated. Given the characteristics of government in Bolívar province—in which there exist both ayllu and union leaders in every comunidad and at each subsequent level of social organization—the union viewed Gregorio’s and others attendance at these meetings without them as illegitimate. In response, various ayllu leaders claimed they had every right to do so, given that they were uniquely responsible for maintaining the *usos y costumbres* and that they had existed as a form of authority prior to the colonization of the Americas. In this sense, they were the true Indigenous authorities and were recognized as such by the 2009 constitution.

The description so far may suggest a neat divide between ayllu and union. However, while the union and ayllu are different sources of normativity in Bolívar, along with the local municipal and state governments, they are not static and bounded entities: individuals, principles, and practices move among them. This situation has been shaped by historical



interactions with the colonial and postcolonial state, which largely account for both the nature of local government in Bolívar and the substantive normative differences between its sets of authorities.

### **A History of Local Systems of Authority, Law, and the Bolivian State**

Bolívar province and other Indigenous communities in Bolivia have had a longstanding relationship with the wider state and its changing constitutional legal models that have progressively shaped local understandings of community, systems of law, and governance. With the colonization of the Americas, the Spanish and Indigenous populations were divided into separate legal categories, referred to as the Spanish and Indian “Republics,” respectively, and the practice of internal government by native communities was tolerated (Thomas 2017). Following independence, the new state was governed by Spanish-descended elites (Klein 2003). This new ruling class conceived of Bolivia as a nation with a unitary identity and viewed the continuation of Indigenous ways of life as a barrier to the economic and cultural development of the nation, while many ayllu communities maintained a degree of autonomy and resisted the seizure of their territories, both through legal channels and mass uprisings (Mendoza, Patzi Gonzáles, and López Mamani 2002; Platt 1988). In 1952, Bolivia experienced a revolution under the government of the *Movimiento Nacionalista Revolucionario* (Revolutionary Nationalist Movement; MNR). This established an assimilationist constitutional model in which highland Indigenous peoples gained social and economic rights while being obliged to adopt a new identity as *campesinos*, or peasants, as part of the ideology of *mestizaje* (cultural and racial mixing). Highland peoples were encouraged to establish unions as a modern form of local government and to become peasant smallholders who were integrated into the nation-state and capitalist markets. In the region which constitutes present-day Bolívar the peasant union by the 1960s had established a presence and a role as a form of political representative and broker with the wider state and society. Meanwhile, the traditional ayllu authorities continued to be responsible for administering land use, agricultural production, and the complex of customs and practices of the *usos y costumbres*.

In the 1980s, multiculturalism emerged as a new constitutional model throughout Latin America. Within this model, best expressed in International Labor Organization Convention 169, Indigenous peoples are viewed as minority cultural groups in need of protection. To be Indigenous is to have a special relationship with a land or territory, which in turn confers rights over its occupation and use and requires groups that wish to be recognized as such to prove “ancestrality” or to show how the land they occupy is essential to their way of life. Various authors (Hale 2005; Postero 2016) have described this period of reform as “neoliberal multiculturalism” as limited recognition and legal rights were granted to Indigenous communities at the expense of furthering governmental decentralization. While such reforms have been used by Indigenous peoples to exercise their own justice (Thomas 2017; Sieder 2011), the extent to which they provide genuine autonomy or prevent the assimilation of Indigenous customary practices into state law is questionable (Hale 2005).

During the 1990s and early 2000s, two neoliberal multicultural reforms, the Popular Participation Law (LPP) and the National Institute for Agrarian Reform (INRA) law, provided the local peasant union and ayllu leaders with distinct roles. The LPP aimed to involve local people in the administration of development; in Bolívar, this meant establishing the municipal council and a role for the local peasant union in administering small-scale development projects and negotiating access to funds from local and national governments. In 2004 the union and ayllu leaders effected an “Indigenous takeover” of the municipal government in order to gain direct control of local resources. In the process, they replaced

in entirety the traditionally dominant political parties, whose representatives had been outsiders from the cities or mestizo townsfolk. Meanwhile, collectively titling the territory of the province as a TCO under the INRA law provided a role for the ayllu authorities, helping them rebuild their customary practices and structures with assistance from national-level organizations, such as the ayllu federation, CONAMAQ. These projects legitimated both sets of authorities, shaped their organization and orientation, and established a hybrid form of government. Since 2004, the municipal government has comprised mostly MAS councilors linked to the union and a minority of ayllu representatives. At the national level, each set of authorities is affiliated to larger parent organizations: for the union, the CSTUCB national peasant union federation and for the ayllu, CONAMAQ.

The reforms of the 1990s both provided separate projects for the ayllu and union and established the notion that they perform distinct but complementary roles. While forms of authority overlap as persons move between roles, individuals work principally within one system of authority. This division does not map onto differences in occupation, education, or residence, but reflects involvement in the political projects of the union and ayllu. These projects, roles, and institutional affiliations help shape their differing normative understandings of their community.

The role of the union as an outward-facing representative and intermediary for developments funds, its closeness to the MAS party, and the CSTUCB federation influences its leaders to support the central state and national development programs. The traditional authorities, with their role of managing access to land and agricultural production within the territorial organization of the ayllu, mediate relationships between people and the land they inhabit. With the help of the CONAMAQ federation, they have sought the reconstitution of customary practices and the titling of their territories. The union has pursued material improvements and greater opportunities for the families of the province through development projects and greater representation within the structures of the state, and the ayllu authorities have sought to defend the integrity of their territory and customs. Broadly speaking, union authorities see the individual or family as the basic unit of economic development and community membership and the bearer of social rights and responsibilities. Meanwhile, ayllu leaders conceive of community in terms of the totality of relationships among persons and the land they inhabit.

This period of Bolivian history came to an end in 2005 with the election of the national MAS government and President Evo Morales, following near-revolutionary public protests in opposition to the neoliberal reforms of the previous twenty years. To give expression to the demands of the diverse social movements participating in this process, the MAS government instituted a constituent assembly in which representatives of various social organizations held seats, including the CSTUCB and CONAMAQ. The resulting constitution was wildly ambitious in its aim of establishing a plurinational state and acknowledging the right of Indigenous peoples to adjudicate all legal matters within their communities, but it remains weakly implemented. As Daniel Goldstein (2012) has observed, under the MAS government, ambitious legal and administrative measures—including reforms of justice and policing—have been enacted in a bureaucratic, top-down fashion, resulting in a panoply of government agencies and vice ministries that lack the power or resources to make their presence felt within the communities they aim to benefit.

The constitution also states that a jurisdictional demarcation law will determine the limits and coordination between ordinary and Indigenous jurisdictions. The fact that the constitution initially posits an apparently strong form of Indigenous judicial autonomy and then establishes the legal basis for its limitation and separation from the state courts reflects a tension between the two views of legal pluralism implicit within it (Barrantes-Reynolds

2016). The first is the approach taken by the multicultural model of the neoliberal period, in which limited autonomy was granted to minority groups by the state; the second approaches plurinationalism as a project of decolonization to create an alternative to the liberal state, and sees the validity of Indigenous legal arrangements as derived from their right to self-determination as peoples. This tension reflects the distinct perspectives of the social organizations that participated in the constituent assembly. The CSTUCB were less concerned with Indigenous rights (Postero 2016), instead favoring economic development and centralization of the state over the autonomy of Indigenous communities. Simultaneously, Indigenous organizations, including CONAMAQ, wished to seriously pursue local autonomy and decolonization (Schavelzon 2013).

Moreover, the constitution contains discourses of indigeneity espoused by the various social organizations involved in drafting it. These range from a strict definition of Indigenous identity, rooted in notions of territoriality and the continuity of preconquest social practices, to a broadly inclusive definition approximating what Salvador Schavelzon (2014) terms “ecumenical indigeneity.” This is the populist ethnic nationalism of the MAS government that unites multiple ethnic groups and social sectors into a single subaltern subject (Canessa 2014), including peasants, miners, and colonists in the tropical lowlands who would have formerly been considered mestizos (Grisaffi 2010). Moreover, Indigenous legal jurisdiction is defined as *justicia indígena originaria campesina* (native Indigenous peasant justice): an unwieldy phrase that came about when union leaders wanted their social organizations to be recognized as Indigenous and thus be eligible for corresponding rights and benefits (Schavelzon 2014). The broad scope of this definition assumes diverse peoples share similar procedures and institutional values, resulting in a monolithic conception of the juridical nature of Indigenous legal systems (Goodale 2019). The Bolivian constitution, therefore, offers extensive rights to Indigenous peoples without providing a clear account of indigeneity. These ambiguities have important consequences for how constitutional reforms have been interpreted and deployed differently by distinct Indigenous communities and social constituencies (Canessa 2014; Goodale 2019). The following section will analyze how and why the contents of the constitution are disputed *within* the Indigenous community of Bolívar by its different local political and judicial authorities.

### **Contested Justice, Legal Pluralism, and Indigeneity**

In the case of Piruani, the union and ayllu authorities express opposing views regarding how resources should be owned and distributed, how disputes should be resolved, and the nature and purpose of punishment. These correspond to the Western categories of distributive, procedural, and retributive justice. Yet these are interrelated: viewing land as an individually owned commodity or as part of the social and territorial organization of the ayllu informs whether resolving conflict over it should be a matter of arbitrating the rights and responsibilities of individual parties or the restoration of ties among persons and the land. In turn, this relates to whether punishment should involve individual settlement or a process of didactic reinforcement and symbolic restoration of social bonds and values. Ultimately, these differences reflect understanding their community as either comprising individuals and individual families or as the totality of relationships of mutual interdependence among persons and the land they inhabit.

Prior to the current period, the union and ayllu leadership, despite representing different sources of normativity, coexisted and were regarded as mutually complementary systems of authority, in large part because of the projects afforded them by the neoliberal multicultural reforms of the 1990s. It is the constitutional reforms of the national MAS government that caused the case of Piruani to transform into a dispute over the nature of justice and the

legitimacy of the ayllu or union as sources of judicial authority. The constitution devolves judicial power to Indigenous communities like Bolívar while tacitly regarding them as homogenous, compelling them to accept one source of normative authority. Meanwhile, its ambiguous and conflicting definitions of indigeneity and legal pluralism provide the local authorities with the means to dispute which of them should be recognized as the authentic Indigenous judicial authority, how justice should be administered, and how community membership should be understood. Ayllu and union leaders therefore offer competing interpretations of how the constitution defines indigeneity and legal pluralism. I observed this not only in debates and conversations surrounding the case of Piruani, but in interactions with organs of the new plurinational state.

In July 2015, I attended a meeting in the comunidad of Vilaycayma, along with representatives of the ayllu, union, and municipal council. The meeting was chaired by a lawyer from the constitutional court in Sucre as part of a process of consulting Indigenous communities on the Environmental and Agrarian Tribunal: a part of the new Bolivian state that would adjudicate agricultural and environmental matters. Those present were asked to discuss their local practices for resolving conflict. A septuagenarian resident of Vilaycayma, Don Enrique Tola, made an intervention in which he accused the present leaders of his comunidad of being mistaken about how justice should be carried out. They had lost their customs and instead settled things with money. He described how when he was a young man, it had been normal to make someone swear a *juramento* (declaration of intent) in the presence of neighbors to prevent further transgressions:

If you don't do this then you will be dead right here [...] you would make the oath, we would place a little salt and crossed blades. And this is what you would shout. Shouting this, in making the oath you would swear, Lord in my heart, that this and that [...]. (Q)

The person making the oath would walk over the crossed blades while shouting that they should die if they did not keep their word. If they failed to do so, then *Tata Dios* (God, the father) would strike them down. In this way, the community could be sure that offender would never repeat their crimes and would comply with the sanctions they were obliged to make to repair the damages they had caused their neighbors and to the social contract of the community. Sabino Veizaga, a former ayllu leader, seconded this as an example of the sort of ancestral practices they had to recover to deal with the problems taking place in communities like Piruani.

Sabino gave one of the more considered interventions during that meeting. Unlike the angrier speeches made by ayllu and union figures, his was calm, measured, and clearly articulated his vision of legal pluralism. He was quietly dignified, polite, and intelligent in explaining how he believed the meeting to be very important, given that Bolívar, as an “ancestral territory,” had traditionally administered its own forms of justice with no recognition or oversight by the state. With the new plurinational constitution, this sort of space provided the possibility to move toward a greater understanding between the state and their community. Yet, at the same time, it was making community members a little sad that some of the judicial purview of the traditional authorities was being taken away from them. Here, Sabino was referring to the jurisdictional demarcation law that establishes clear boundaries between Indigenous and ordinary jurisdictions. While he recognized the existence of problems in comunidades such as Piruani, they had to assume the responsibility themselves for resolving these issues. They needed to follow the *usos y costumbres* and to reincorporate their ancestral knowledge and practices. In the past, he claimed, time

was not wasted on lawyers and written documents. Rather, problems were resolved by the traditional authorities in the manner described by Don Enrique: by using juramentos or summary punishments. This, he stated emphatically at the conclusion of his speech, was the key to overcoming the problems they were experiencing.

The notion of recovering practices and creating an alternative to the liberal state and its system of laws, based on the collective experience and ancestral knowledge of their community, is very much part of the understanding of legal pluralism as a project of decolonization shared by national ayllu organizations, such as CONAMAQ, and prominent ayllu leaders within Bolívar province. In contrast, the jurisdictional demarcation law, which defines the limits between the state courts and Indigenous legal systems very much goes against any serious idea of legal decolonization. It limits the purview of Indigenous jurisdictions to those areas that are “traditionally dealt with” by Indigenous authorities and excludes them from judging major criminal offenses and interfering with key functions of the central state. Many of the traditional authorities believed the jurisdictional demarcation law to be unconstitutional, because it places limits on the ability of Indigenous communities to manage their own justice. They interpret the constitution to be in favor of a version of legal pluralism as part of a decolonial endeavor of refounding Bolivia.

The jurisdictional demarcation law also restates the right of local peasant unions to be involved in matters of Indigenous justice, as recognized social organizations within “Indigenous native peasant” communities. Much of the ayllu leadership reject this entirely and believe the inclusion of unions as a recognized Indigenous organization to be a mistake. They point to the wording of articles 2 and 30 of the constitution, which state that Indigenous communities, and by extension their authorities, are those that existed prior to the Spanish colonial invasion. This supports the view that the traditional ayllu authorities are the authentic Indigenous leaders as they predate the colonization of the Americas and are therefore uniquely responsible for defending and reconstituting their *usos y costumbres*. They protest that the peasant union is a European institution imposed as part of the post-1952 assimilationist constitutional model of the MNR government.

In addition to claiming that the constitution advocates a strong form of legal pluralism, ayllu figures such as Sabino Veizaga also interpret its definition of indigeneity in an exclusive sense, thereby supporting their normative understandings and justifying their role as the authentically Indigenous representatives of their community. This refers to qualities of territoriality, ancestrality, and precolonial practices and social institutions (Canessa 2014). This supports the view that their community should be understood in terms of the complex of practices imbricated within the traditional organization of their territory and affirms the ayllu authorities’ role in maintaining them.

It was clear at the time of my fieldwork that union leaders broadly followed the discourse of inclusive indigeneity of the national MAS government and justified their constitutional legitimacy as judicial authorities on this basis. This is a conception of Indigenous peoples as a broad class of socially and economically marginalized persons. This is compatible with the union’s vision of their community as comprised of individual families as the fundamental unit of development and the bearers of rights and responsibilities.

## Conclusion

A land dispute between families in a village hamlet of the Indigenous community of Bolívar transformed into a discussion between its forms of local authority over how to resolve the conflict and who has the right to judge the case according to the legal pluralism established by the 2009 Bolivian constitution, illustrating in the process their different conceptions of justice and law. Although systems of authority in Bolívar province substantially

interpenetrate, the roles and institutional affiliations of the union and ayllu account for the distinct normative understandings of their community which underly these disagreements. By interpreting the constitution to support different forms of legal pluralism and definitions of indigeneity, each side pursued the legitimation of these understandings and their role as judicial authorities. A project of legal reform to provide recognition and autonomy to Bolivia's previously marginalized Indigenous majority population therefore became the basis for conflict among Indigenous leaders.

The election of the Movement for Socialism in 2005 and the ratification of the new constitution in 2009 were hailed by indigenous activists as the dawning of a "second independence" (Exeni and Santos 2012): the culmination of centuries of political struggle by Bolivian Indigenous peoples against the marginalization they had suffered from a Eurocentric state and society that failed to recognize their values, worldviews, and ways of life (Cusicanqui 2010; Postero 2016). Yet this process has arguably faltered, as division has emerged among the broad coalition of social movements that originally brought the MAS to power, and Indigenous organizations have expressed disappointment at the perceived failure of the government to adequately enact reforms (Postero 2016). This reality was underscored by recent political upheaval. In late 2019, following contested national elections and widespread civil unrest, President Evo Morales was ousted by a right-wing interim administration. While the MAS returned to government only eleven months later under new president Luis Arce, its project to transform Bolivian society and the state has arguably fragmented into multiple contested interpretations (Goodale 2019). In part, this demonstrates fundamental tensions within the coalition of social organizations and constituencies represented by the MAS. However, it also reflects the inherent difficulty of accommodating the state to the values and forms of social life of diverse communities through a process of top-down constitutional reform.

There exists a longstanding debate concerning whether the recognition of plurality in state law constitutes genuine legal pluralism or merely a weak version that privileges the centrality of the state as the ultimate source of normativity (Benda-Beckman and Turner 2019; Sani 2020). Yet the Bolivian constitution recognizes state and nonstate law as structurally equal and independent sources of authority. This suggests that the real issue for projects of *de jure* legal pluralism is not to challenge the juridical centrality of the state but to find a way of practically reconciling state law with what legal scholar Eugen Ehrlich (2001) termed the "living law": the shared normative understandings which take form through and structure human social life. Informal systems of dispute resolution, like those in Bolívar, rely on flexible interpretations of these socially embedded norms, meaning the grounding of legal legitimacy always remains essentially plural and contested. Recognizing the authority of Indigenous law within a single, broadly defined jurisdiction imagines Indigenous political and legal systems as similar orders of institutionalized norms that map onto bounded, internally homogenous communities. The reality of multiple forms of authority, interpenetrating normative orders, and the essentially contested nature of unofficial law within Indigenous communities means this can paradoxically provoke local disputes over the meaning of the constitution, justice, and collective identity.

As has been argued in a recent study of Bolivian constitutional reform (Santos and Exeni 2012), the category of plurinational legal pluralism must be given substance through an iterative process of reciprocal intercultural engagement between Indigenous and state legal systems. More than formal recognition, this requires comprehending the diverse forms of internal political and legal organization within Indigenous communities and how these already interact with state law. Yet the challenge of constructing plural legal arrangements around the shifting and contested norms of internally heterogeneous communities can be

found in many contexts, including attempts by Shari‘a councils in the United Kingdom to create spaces for Islamic law that reflect the shared understandings and lived values of different British Muslims (Bowen 2016). In the context of contemporary Bolivia, Mark Goodale (2019) has commented that for plurinational legal pluralism to effect real change, it must be built from the bottom up, through understanding how Indigenous peoples conceive of and practice justice, and using this knowledge to reformulate the concept of law itself. While analysis of the case of Piruani supports this contention, it also suggests that this process of building plural legal arrangements from the bottom up is vital to any effort to make law responsive to the diversity of values and perspectives that exist throughout human societies.

### Notes

I would like to thank the UK Economic and Social Research Council for providing the funding that made this research possible (grant number S/J500173/1) and Thomas Grisaffi and Martyn Wemyss for giving feedback on earlier drafts of this article. The data underlying this research cannot be made publicly available due to issues of confidentiality.

1. I do not use pseudonyms in this article. The subjects I discuss, who all hold political office or leadership roles, gave consent for me to use their names. I am confident this will not cause harm to individuals' safety, livelihoods, or reputations.
2. (S) indicates Spanish source language and (Q) indicates Quechua. Bilingualism is common in the Bolivian highlands, and my fieldwork was conducted in both languages. All translations are by the author.

### References Cited

- Albó, Xavier. 1977. *La Paradoja Aymara: Solidaridad y Faccionalismo [The Aymara Paradox: Solidarity and Factionalism]*. La Paz: CIPCA.
- Barrantes-Reynolds, María-Paula. 2016. "Legal Pluralism in the Constitution of Bolivia of 2009: Between Multiculturalism and Plurinationalism." PhD diss., University of Leicester.
- Bastien, Joseph W. 1985. *Mountain of the Condor: Metaphor and Ritual in an Andean Ayllu*. Longrove, IL: Waveland Press.
- Benda-Beckmann, Keebet, and Bertram Turner. 2019. "Legal Pluralism, Social Theory, and the State." *Journal of Legal Pluralism and Unofficial Law* 50 (3): 255–74.
- Bowen, John R. 2016. *On British Islam: Religion, Law and Everyday Practice in Shari‘a Councils*. Princeton, NJ: Princeton University Press.
- Canessa, Andrew. 2014. "Conflict, Claim and Contradiction in the New 'Indigenous' State of Bolivia." *Critique of Anthropology* 34: 153–67.
- Cusicanqui, Silvia-Rivera. 2010. *Oprimidos pero no vencidos: Luchas del Campesinado Aymara y Qhechwa 1900–1980 [Oppressed but not defeated: Struggles of the Aymara and Quechua Peasantry 1900–1980]*. La Paz: La Mirada Salvaje.
- Ehrlich, Eugen. 2001. *Fundamental Principles of the Sociology of Law*. Brunswick, NJ: Transaction.
- Fernández-Osco, Marcelo. 2001. "La ley del ayllu: justicia de acuerdos" [Ayllu law: Justice by agreement]. *Tinkazos* 9: 11–28.
- Goldstein, Daniel. 2012. *Outlawed: Between Security and Rights in a Bolivian City*. Durham, NC: Duke University Press.

- Goodale, Mark. 2019. *A Revolution in Fragments: Traversing Scales of Justice, Ideology and Practice in Bolivia*. Durham, NC: Duke University Press.
- Grisaffi, Thomas. 2010. "We Are Originarios ... We Just Aren't from Here": Coca Leaf and Identity Politics in the Chapare, Bolivia." *Bulletin of Latin American Research* 29 (4): 425–39.
- Hale, Charles. 2005. "Neoliberal Multiculturalism: The Remaking of Cultural Rights and Racial Dominance in Central America." *PoLAR: Political and Legal Anthropology Review* 28 (1): 10–19.
- Hoekema, André J. 2005. "European Legal Encounters between Minority and Majority Cultures: Cases of Interlegality." *Journal of Legal Pluralism and Unofficial Law* 37 (51): 1–28.
- Klein, Herbert S. 2003. *A Concise History of Bolivia*. Cambridge: Cambridge University Press.
- Mendoza, Fernando, Félix Patzi Gonzáles, and Félix López Mamani. 2002. Atlas de los ayllus Sura y Qurpa Kirkiyawí: provincias Tapacarí, Arque y Bolívar [*Atlas of the ayllus Sura and Qurpa Kiriyawí: Provinces Tapacarí, Arque and Bolívar*]. Cochabamba: PRODEVAT.
- Platt, Tristan. 1988. Estado boliviano y ayllu andino: Tierra y tributo en el norte de Potosí [*Bolivan state and Andean ayllu: Land and tribute in northern Potosí*]. Lima: Instituto de Estudios Peruanos.
- Plata, W., and J. Cameron. 2017. "¿Quiénes dicen no a las autonomías indígenas y por qué?: Pragmatismo, hibridez y modernidades alternativas en la base" [Who says no to indigenous autonomies and why? Pragmatism, hybridity and alternative modernities at the grassroots]. *Cuestión Agraria* 3: 19–60.
- Postero, Nancy. 2006. "Indigenous Responses to Neoliberalism: A Look at the Bolivian Uprising of 2003." *PoLAR: Political and Legal Anthropology Review* 28 (1): 73–92.
- . 2016. *The Indigenous State: Race, Politics, and Performance in Plurinational Bolivia*. Berkeley: University of California Press.
- Sani, Hanisah Binte Abdullah. 2020. "State Law and Legal Pluralism: Towards an Appraisal." *Journal of Legal Pluralism and Unofficial Law* 52 (1): 82–109.
- Schavelzon, Salvador. 2013. El nacimiento del Estado Plurinacional de Bolivia: etnografía de una Asamblea Constituyente [*The birth of the plurinational state of Bolivia: Ethnography of a constituent assembly*]. Buenos Aires: IWGIA.
- . 2014. "Mutaciones de la identificación indígena durante el debate del censo 2012 en Bolivia" [Mutations in Indigenous identification during the debate around the 2012 Bolivian census]. *Journal of Iberian and Latin American Research* 20 (3): 328–54.
- Sieder, Rachel. 2011. "Contested Sovereignities: Indigenous Law, Violence and State Effects in Postwar Guatemala." *Critique of Anthropology* 31 (3): 161–84.
- Santos, Boaventura de Sousa, and José Exeni. 2012. Justicia Indígena, Plurinacionalidad e Interculturalidad en Bolivia [*Indigenous Justice, Plurinationality and Interculturality in Bolivia*]. Quito, Ecuador: Ediciones Abya Yala.
- Tamanha, Brian Z. 2010. "Understanding Legal Pluralism Past to Present, Local to Global." In *Legal Theory and the Social Sciences*, edited by Maksymilian Del Mar and Michael Giudice, 501–35. Oxford: Routledge.
- Thomas, Marc Simon. 2017. *The Challenge of Legal Pluralism: Local Dispute Settlement and the Indian-State Relationship in Ecuador*. Oxford: Routledge.